IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6297 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SOMIBEN W/O GORDHANBHAI CHUNIYABHAI VASAVA

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 6297 of 1984

MR VJ DESAI for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1

MR PV NANAVATI for Respondent No. 2

RULE NOT RECD BACK for Respondents No. 3-4

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 05/12/2001

ORAL JUDGEMENT

1. The present petition is filed by one Somiben,

wife of Gordhanbhai Chuniyabhai Vasava. The reliefs sought for in the petition are to quash and set aside the finding regarding the contributory negligence on the part of the petitioners-labourers and to award the amount, which has been deducted by the Tribunal in M.A.C. Petition No. 149 of 1981, a copy of which is annexed with the Special Civil Application, be paid to the present petitioner.

2. The learned Advocate appearing for the petitioner has produced a copy of the judgement of this Court in First Appeal No. 1438 to 1445 of 1984 with First Appeal No. 366 to 368 of 1984 with First Appeal No. 1373 of 1985 to 1378 of 1985 with Special Civil Application Nos. 29, 30 and 3869 of 1985 with Special Civil Application No. 32 of 1985 to 43 of 1985. He states that the present Special Civil Application is also arising out of the same accident.

3. For the reasons recorded in the judgement rendered in the aforesaid matters, the judgement given by the Motor Accident Claim Tribunal (Main), Bharuch in Motor Accident Claim Petition against which this Special Civil Application is filed is modified to the extent that the petitioner of this Special Civil Application, who is held to be guilty of contributory negligence to the extent of 50% is reversed. As is held in the aforesaid judgement and order, the accident has been caused wholly and solely because of the rash and negligent driving of the driver of the dumper truck and therefore, deduction of 50% of the amount of compensation for which the present petitioner in this petition is held liable, is quashed and set aside.

The learned Tribunal has awarded the interest at the rate of 6% per annum. In the facts and circumstances of the case, this Court does not consider it to be a fit case to modify the interest as awarded by the Tribunal. The enhanced amount of compensation, to which the petitioner is entitled, be paid with 6% interest from the date of filing of the application for compensation and 12% from the date of the award till the date of payment thereof. The respondents are directed to deposit the enhanced amount together with the interest thereon to be calculated at the rate as aforesaid for the period from the date of the application till the date of the award and from the date of the award till the date of the payment thereon within a period of three months from the date of receipt of certified copy of this order.

This Special Civil Application is allowed to the

aforesaid extent only. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)
kamlesh*